A photograph of two adolescents holding hands, centered in the upper half of the page. The adolescent on the left is wearing a green long-sleeved shirt and red shorts. The adolescent on the right is wearing a white t-shirt and green jeans. The background is plain white.

Adolescent Sexual Behavior and the Law

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March 2011



Crime Victims' Institute • Criminal Justice Center • Sam Houston State University

...from the Director

Statutory rape laws have been enacted to protect minors from sexual abuse from either adults or peers. The intent of the laws when they were passed was to protect minors from coercive and involuntary sexual activity. However, it is becoming increasingly clear that some teenagers engage in sexual activity even before they reach the legally defined age of consent. In the eyes of the law, persons below that age cannot give “consent.” Given the changing mores in this country and the increasing acceptance by teenagers of early sexual intimacies, more and more young people are finding themselves facing sexual assault charges, whether or not either partner feels victimized. States have responded to these cases in a variety of ways. This report presents an overview of the efforts to handle such cases and calls attention to suggested ways to address the dilemmas caused by the laws as they are written.



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MISSION STATEMENT

The mission of the Crime Victims' Institute is to

- conduct research to examine the impact of crime on victims of all ages in order to promote a better understanding of victimization
- improve services to victims
- assist victims of crime by giving them a voice
- inform victim-related policymaking at the state and local levels.



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Adolescent Sexual Behavior and the Law

With approximately half of all 17 year olds reporting that they have engaged in sexual intercourse, adults need to acknowledge that teenagers today are participating in the autonomous acts of sexual experimentation.¹ However, in contrast to the high rates of teens admitting to having sexual relationships, and even higher number of the adult population, more than 70%, have stated that adolescents having sex is “always wrong”.² This public opinion has influenced not only parents but authority figures and the law.

In the state of Texas teenagers under the age of 17 cannot legally give consent to engaging in sexual activities. This is true even if they are a willing participant. However it is not teenagers themselves who can be prosecuted if the law is violated, it is the older person involved, no matter how little the age gap between the two.

Jeff was charged with sexual assault when he was 18 years old. He and his then 15 year old girlfriend began dating when Jeff was a junior in high school. He and his girlfriend said they were in love and had plans to get married and began a sexual relationship. When Jeff’s girlfriend’s grades declined, her father blamed him , and after learning they were having sexual relations, he reported Jeff to the police for having sex with a minor.

A case such as the one described above, can be prosecuted in Texas as a sexual assault:³

(a) *A person commits an offense if the person:*

(2) *Intentionally and knowingly:*

(A) *Causes the penetration of the anus or sexual organ of a child by any means;*

(B) *Causes the penetration of the mouth of a child by the sexual organ of the actor;*

(C) *Causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;*

(D) *Causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or*

(E) *Causes the mouth of the child to contact the anus or sexual organ of another person, including the actor.*

“Child” in this section means anyone under the age of 17 who is not the spouse of the actor an offense under this section is considered to be a felony in the second degree. Punishments could include, but are not limited to mandatory jail time, extensive probation, and a life long registration of the sexual offender registry.

Statutory Rape Laws

The age of consent is set by each state, and used to enforce similar statutory rape laws such as the one described above. While the age of consent varies, currently each state requires a minimum age of consent of at least 16 years old and no older than 18. The ages of consent have changed over the years, as have the statutory rape laws to which they apply (Figure 1).

Age of Consent by State

- - 16
- - 17
- - 18

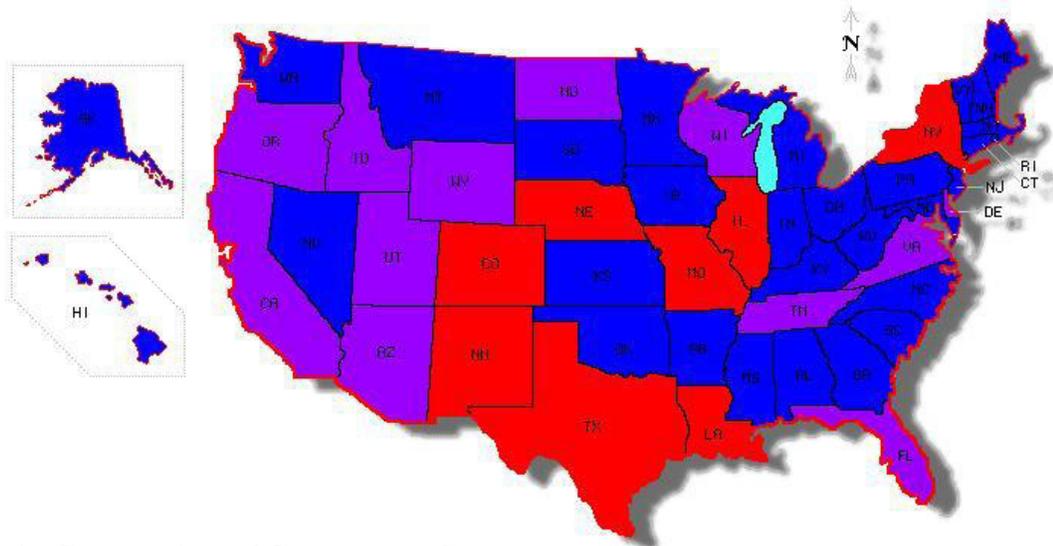


Figure 1. Current Age of Consent per State

Although “statutory rape” is rarely used in the language of the laws, the term is typically recognized as encompassing the intent of several other named laws such as sexual assault, sexual assault of a minor, rape of a child, corruption of a minor, carnal knowledge of a minor, unlawful carnal knowledge, sexual misconduct, or child molestation, to name a few. The predominant rationale of statutory rape laws is to protect minors who are said to be incapable of consenting to sexual intercourse or other sexual activities, due to their lack of experiences to make mature, informed decisions.⁴ It is believed that youth below the age of consent are less likely to understand and consider the potential consequences of sexual activities, such as sexually transmitted diseases, and pregnancies. These minors are also argued to be unequal to adults, socially, economically, and legally. Because of this, statutory rape laws have been introduced to reduce the power adults may have over minors. These laws do consider that minors will consent to sex. It is the basis for the laws that even if minors consent, adults cannot engage in sexual activities with them because of the power they have over minors. What the laws do not consider is that minors are consenting to have sex with other minors or slightly older peers who do not have power over them.

The wording of these laws encompass teenage relationships making it equally illegal for, say a 17 year old to be sexually intimate with a 16 year old boyfriend or girlfriend. However, because the laws were not originally written to prosecute such cases, the law was rarely enforced among teen couples. In 1995, however, a study was published that caused many states to toughen their statutory rape laws, widening the net to include more teen romances. Landry and Forrest (1995)⁵, found that half the teenage pregnancies of girls aged 15-17 were the result of teenagers having sexual relationships with men who were 20 years of age or older. Thus, statutory rape laws took on a dual function: protect minors from being taken advantage of sexually by adults, and helping to prevent teen pregnancies. The latter however, may be a misguided attempt in light of additional research that shows these laws have little effect on girls who actually become pregnant.⁶

Due to the number of jurisdictions that began to more aggressively prosecute close-in-age offenders, a backlash was created, based on the belief that it was unfair to punish these sexually active teenage relationships in the same way sexual predators were punished.⁷ Some argued that the sentences given to some statutory rape offenders were tantamount to cruel and unusual punishment. Media coverage would often highlight cases that created strong public opinions as to the fairness of these laws and the repercussions they had on offenders.

Genarlow, a 17 year old high school senior, was arrested for engaging in oral sex with a consenting partner who was two years younger than he. Those two years would prove to be crucial in this case, since the victim was below the age of consent which is set at 16 in Georgia where the incident took place. On New Year's Eve, 2003, Genarlow attended a party in a hotel room with a number of friends. During the night, several sexual activities among partygoers were video recorded. There were two females involved in the acts, one, a seventeen year old and the other, 15. Even though the 15 year old participated willingly, since she was below Georgia's age of consent, the males who engaged in oral sex with her had committed a crime as described by Georgia law. The mother of one of the girls contacted authorities to report that her 17 year old daughter had been raped. Evidence from the hotel room was confiscated, including the video tape.

While the tape showed that the 17 year old girl was a willing participant in the sexual activities she partook in, determining that she had not been raped, it did convict six of the male partygoers, including Genarlow, of Aggravated Child Molestation for the acts they participated in with the 15 year old female. Eventually, five of the males charged in this case chose to accept a plea bargain which required them to register as sex offenders, but would reduce their prison stay from the mandatory 10 years. Genarlow did not accept the plea bargain and was given the minimum sentence. He was sentenced to prison for 10 years after which he was to be put on probation for a year and made to register as a sex offender for the rest of his life. This case made national headlines, and there was an outcry that the court sentencing was unjust.⁸

This case and others like it prompted the Georgia legislature to amend their Aggravated Child Molestation Laws which would thereafter classify cases like this as a misdemeanor with a maximum sentence of one year in jail, and would not require the offender to register on the sex offender registration list. However, the bill specifically stated that the new amendment would not apply retroactively. As a result, Genarlow remained in jail. After many failed appeals, he was released from prison in 2007. The Georgia State Supreme Court ruled in his favor, finding that this teenager's sentence was cruel and unusual punishment. He was able to return home to his family, which under his original sentence he would not have been able to do as a registered sex offender since his sister was a minor.

Age Gap Provisions

Ironically, if Genarlow had engaged in sexual intercourse with the 15 year old at the New Year's Eve party, he would have only been convicted of a misdemeanor and not have been made to serve any jail time or register as a sex offender due to Georgia's inclusion of an *Age Gap Provision* in their Child Molestation law. Because he engaged in an oral sex (sodomy) act, his case was classified as *Aggravated Child Molestation*, which at the time did not have the Age Gap Provision. Now, the law reads as the following:

§ 16-6-4. Child molestation; aggravated child molestation⁹

(a) *A person commits the offense of child molestation when such person:*

- (1) *Does any immoral or indecent act to or in the presence of or **with any child under the age of 16***
- (2) *years with the intent to arouse or satisfy the sexual desires of either the child or the person; or*
- (3) *By means of an electronic device, transmits images of a person engaging in, inducing, or otherwise participating in any immoral or indecent act to a child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person.*

(b)

- (1) *Except as provided in paragraph (2) of this subsection, a person convicted of a first offense of child molestation shall be punished by imprisonment for not less than five nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7. Upon a defendant being incarcerated on a conviction for a first offense, the Department of Corrections shall provide counseling to such defendant. Except as provided in paragraph (2) of this subsection, upon a second or subsequent conviction of an offense of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however, that prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a punishment of life imprisonment.*
- (2) ***If the victim is at least 14 but less than 16 years of age and the person convicted of child molestation is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.***

(c) *A person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves an act of sodomy.*

(d)

- (1) *Except as provided in paragraph (2) of this subsection, a person convicted of the offense of aggravated child molestation shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.*

(2) ***A person convicted of the offense of aggravated child molestation when:***

a three month suspended sentence and did not have to register as a sex offender thanks to New Hampshire passing an Age Gap Provision earlier that year. Before January 1, 2007, the New Hampshire law read under RSA 632-A:3, Felonious Sexual Assault, that a person is guilty of a Class B Felony if such person engages in sexual penetration with a person other than his legal spouse who is 13 years of age or older and under 16 years of age. The law now has been amended to state:

A person is guilty of a Class B Felony if such person engages in sexual penetration with a person other than his legal spouse who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 3 years or more.

Romeo and Juliet Clauses

As of 2010, 30 U.S. states¹¹ are considered to have Age Gap Provisions. However, this does not mean that other states do not have some forms of protection for similar close-in-age relationships. Many states have adopted what are often referred to as *Romeo and Juliet Clauses*. These clauses are often considered the same as Age Gap Provisions, and it is not uncommon for the two terms to be used interchangeably. However, there are slight differences between the two.

Texas is not recognized as having an Age Gap Provision which either reduces the level of the offense or does not consider a crime to have occurred at all. However, Texas does have a Romeo and Juliet Clause. This clause does not stipulate the law, as do the provisions in the laws referred to above. Rather the law remains the same, except that the defendant is given an affirmative defense if certain qualifications are met. The Texas Penal Code under Sec. 22.011 subsection (e) it states that:

It is an affirmative defense to the prosecution under Subsection (a)(2) that:

- *The actor cannot be more than 3 years older than the victim.*
- *The victim was older than 14 years of age at the time the offense occurred.*
- *The actor was not at the time registered or required to register for life as a sexual offender.*
- *The conduct did not constitute incest.*
- *Neither the actor nor the victim would commit bigamy by marrying the other.*

Many states that do not have an Age Gap Provision still make cases in which the participants are close in age a lower level of crime. That said, however, it is still a crime according to their laws. If this is the case, as with Romeo and Juliet Clauses, they are not considered to have an Age Gap Provision (Figure 2). It is important to remember that most states do seek to protect close-in-age teenage offenders, even if the law is not specifically structured for it.

Discretion

A common concern with Romeo and Juliet Clauses, as opposed to an Age Gap Provision, is the amount of judicial discretion individual cases face in terms of prosecuting and sentencing. Because of the large number of potential statutory rape cases, it is said that many jurisdictions will “pick and choose” which cases they want to investigate and prosecute. The Georgia Supreme Court reported that over seven million cases of Aggravated Child Molestation are committed yearly in the United States under the terms of the former Georgia law, making it

Table 1. States and Corresponding Age Spans as allowed in Age Gap Provisions or Romeo and Juliet Clauses.

Alabama	2
Alaska	3
Arizona	0
Arkansas	2
California	2
Colorado	4
Connecticut	2
Delaware	4
Iowa	6
Kansas	N/A
Kentucky	5
Louisiana	2
Maine	5
Maryland	4
Massachusetts	N/A
Michigan	N/A
Minnesota	2
Mississippi	0.5
Missouri	3
Montana	3
Nebraska	3
Nevada	5
New Hampshire	N/A
New Jersey	4
New Mexico	4
New York	4
North Carolina	4
North Dakota	N/A
Ohio	4
Oklahoma	2
Oregon	N/A
Pennsylvania	3
Rhode Island	3
South Carolina	N/A
South Dakota	3
Tennessee	4
Texas	3
Utah	3
Vermont	N/A
Virginia	3
Washington	4
West Virginia	4
Wisconsin	N/A
Wyoming	4

N/A = information could not be confirmed as having an Age Group Provision

literally impossible to try every case.¹² There are often large inconsistencies in deciding which cases to prosecute and the sentences to impose. For example, Wendy was a 17 year old Georgia high school student when she was convicted of Aggravated Child Molestation for engaging in oral sex with a 15 year old boy. Though unlike Genarlow's case described above, which Wendy's case mirrored, she was only sentenced to five years probation.

In some states, a gender bias in prosecuting offenders is especially prominent when both partners of a sex act are under the age of consent. Under a number of jurisdictions if both partners are minors then they are both considered to be victims and offenders of the crime at the same time. In these cases, according to the law of their respective states, the prosecution of each teen would have been called for. However, it is more common to see the prosecution of only the male. For example, in California where the age of consent is 18, a 16 year old male was prosecuted for having consensual sex with his 14 year old girlfriend. Moreover, in Arizona a 13 year old boy was convicted of having consensual sex with his older, 15 year old, girlfriend.¹³

Critics have argued that due to the lack of consistency in handling these cases, prosecution often results in a disproportionate number of convictions that involve minority men who have sex with white women or impregnate minority women.¹⁴ Reports from California, which does not have an Age Gap Provision, show that this may be true for all of the 32 men on their Statutory Rape Enforcement's most wanted list. These offenders were either African-American or Hispanic.¹⁵

It has also been pointed out that when men are prosecuted for impregnating a teenager, some of them will not be able to pay child support if they are sent to prison. This may add to the welfare rolls. Furthermore, those offenders who are made to register as sex offenders have restrictions placed on what jobs they can obtain, thereby decreasing the chance that the men will be able to support their children.

Because of the use of discretion in deciding what to do with close-in-age sexual incidents, many believe that the Model Penal Code (MPC) would be a good alternative. This could reduce arbitrary enforcement and confusion among the public on what is and is not punishable. In the MPC, statutory rape cases are addressed in Sec. 213.3 endorsing the movement to decriminalize sexual relationships (both vaginal and oral) between teenagers who are close-in-age provided that the acts are consensual and the person is no more than four years older than the minor.¹⁶

Sex Offender Registries

The original intent of sex offender registries was to inform the public of sexual offenders living in their communities, so that they could take safety precautions.¹⁷ However, critics are concerned that the large number of low-risk individuals who are placed on sex offender registries may defeat their original intent. Some argue that by requiring offenders to register when their crimes involved consensual teenager relationships makes the purpose of the registries less relevant to the purpose of warning of potentially dangerous predators that are more likely to reoffend.¹⁸ Research has found that sexual offenders who victimize adult women have the highest rates of recidivism accounting for 40% of all sexual offender re-offences.¹⁹ This number becomes even more significant in light of the percent of total re-arrest rates for sexual offenders, which are estimated to be somewhere between 5-12%. This re-offense rate compares to 35-40% of those who committed nonsexual offences.²⁰

Critics suggest that in making outcasts of these low-risk offenders by labeling them through registries may create the opposite effect of what was intended by straining their societal bonds, and, thereby, increasing the likelihood of delinquency. The potential stigmatizing effects of registration may limit their reintegration into society, thereby depriving offenders the ability to lead productive lives. Considerable research in criminology supports these claims, suggesting that the main factors that discourage recidivism are public reintegration, stress management, and a stable lifestyle.²¹

Ten states have enacted a “Tier Classification System” to their registries.²² The risk level assigned determines the degree of sex offender information that is given to the public about an offender. Many states provide a wide range of public notification, such as access to online registries, notices sent to neighbors, schools, and daycare centers. Minnesota provides the public with information on a need-to-know basis.²³ For a Tier I offender his information is available to the victims, witnesses to the crime, and adult member of the immediate household. The information about offenders whose level of risk is higher can be distributed more broadly.²⁴ For lower risk offenders this will eliminate the public at large from being able to access the offender’s picture, address, or other information, thus furthering the goal of reintegrating the individual back into society. Many see policies such as these as a compromise that benefits the public and the offender. States are reluctant to discontinue registries due to the high approval ratings, even if the public admittedly recognizes there is no proof that the registries make communities safer. This is supported by the fact that 73% of the public stated they would still support the registries even without evidence that they reduced sexual abuse offenses.²⁵ However, by implementing Tier Classification Systems registries will remain but allow offenders more reintegration possibilities.

The Need for Reform

It should be noted that many of those who support reforming laws to decriminalize close-in-age sexual relationships still agree with the need to have defined ages of consent and to prosecute statutory rape violators. Their only complaint is that laws should specifically target adult offenders who prey on children and pose a threat to society.

Henry and Cunningham (2010)²⁶ conducted a study to determine if states with a higher age of consent resulted in delaying teenagers’ sexual onset. States that had stricter statutory rape laws did in fact show that both male and female sexual debuts were delayed. However, the more significant statistics were associated with setting the age of consent higher, as opposed to the number of years in states’ age gap spans. In their study using the age of consent as a starting point, they found that the higher the minimum age of consent laws, the more likely a delay in sexual debut.

However, neither this study nor any other research has shown any significant effect of either statutory rape laws or age of consents on teen pregnancies. The authors theorize that this may be due to the fact that teen girls are having more sexual intercourse with teen boys who fall within their states’ age spans. These younger males are less experienced, and have less knowledge about contraceptives, with the result of an increase in teen pregnancies.²⁷

While protecting children from coerced sexual activity, preserving morality, and attempting to reduce teen pregnancies have been the most common rationales for statutory rape laws and their enforcement, others also have questioned the psychological and emotional developments of minors when having early sexual experiences. Proponents of stricter statutory rape laws and those who advocate harsher punishments, regardless of close-in-age relationships,

argue that the younger the sexually active participant is, the more psychological damage is done. It is suggested that those who lack the maturity to engage in sexual activity but do nevertheless, develop more unhealthy attitudes about the acts, relationships, and themselves. Particularly for females, it is said to invoke insecurity and self-esteem issues, often resulting in girls trading sexual acts for acceptance.²⁸

However, others argue that these risks are reduced when teens are at the same level of maturity.²⁹ Meier (2007)³⁰ found no significant relationship between the majority of teenage sexual activity and depression. However, she found that those who engaged in sex earlier than their peers and whose relationships dissolved shortly afterward did report signs of depression. This was especially the case with girls.³¹

Meier makes a point to stress that her study did not suggest that those who did not suffer from mental health problems because of sexual experiences, had any positive effects as a result. She even emphasizes that perhaps policy-makers should focus on creating laws that focus on those who are most vulnerable.³² However, in contradiction to Meier's study, Harden, Mendle, Hill, Turkheimer and Emery (2008)³³ found that minors in healthy teenage relationships that include sex may be protected from becoming involved in delinquent acts later and were reported as having more satisfying relationships as adults.

Rehabilitation

In an effort to further reduce the conviction and punishment of close-in-age teenage relationships many states are adding new policies instead of or in addition to their Age Gap Provisions and Romeo and Juliet Clauses. For example, Wisconsin after evaluating their statutory rape cases and the goals that were served through the forms of punishment applicable to those cases, developed an “**alternative disposition program**” for young offenders.³⁴ This new policy applies to those who were convicted of statutory rape for the first time, and consists of offering the offender an opportunity to attend a nine-week education and rehabilitation class. If the offender attended and successfully completed the class, they would not have to serve a prison or jail sentence, and the conviction would not be included on their permanent criminal record.

There have been studies showing that rehabilitating juvenile sex offenders instead of punishing them results in a more positive outcome for the offender and the public. Carpentier, Silovsky, and Chaffin (2006)³⁵ found in a ten year follow up with juvenile sex offenders that those who received short term rehabilitation treatment had a relatively low rate of sexual re-offending. The study reported that only 2-3% of previously classified juvenile sexual offenders went on to offend later in life. Chaffin (2008)³⁶ argues that this number would have been higher if the minors received treatment but were still made to register as a sex offender.

Offering rehabilitation to low-risk offenders in lieu of the requirement to register as a sex offender, may enhance public safety more than the registry itself does. Critics of the sex offender registry argue that there is little evidence of safety gained by enforcing registration laws,³⁷ and a majority of convicted sex offenders (75%) admitted that registration laws would not deter them from committing another offense should they chose to offend again. Rather, the motivation to remain offense-free was to “prove something” to friends, family and the public.³⁸

Removal of Low-Risk Offenders from Registries

Several states including Florida (Statute 943.04354) and Missouri (Section 589.400.3) have introduced bills that would allow certain sex offenders to be removed from the state registry. Two bills have been introduced in the 82nd session of the Texas Legislature (S.B. No. 198, H.B. No. 227) that would allow qualifying sex offenders to be removed from the Sex Offender Registry or not requiring newly convicted sex offenders to register at all. In parallel to the state's Romeo and Juliet affirmative defense, these bills would enable sex offenders who are required to register, to petition to have their information removed from the Registry. For example, the bill states that the conviction of the sex offender must have been based solely on the ages of the defendant and victim at the time of the offense, meaning no other sexual offense could have taken place, such as using force, or being in a position of authority over the victim. Also, the bill would require that the offender was no more than 4 years older than the victim or intended victim, and that the victim or intended victim was at least 14 years of age at the time of the offense. This bill further stipulates that for the petition to be approved, the exemption

- must not threaten public safety and,
- the act did not occur without the victim's consent, and
- the exemption is in the best interest of the victim, and justice.

Victim Cooperation

Another suggested reform is that of victim cooperation. Many victims in close-in-age relationships may not feel that they have been victimized at all. In fact, many believe no crime has been committed. In these cases, the victim may often try to protect the offender by refusing to cooperate with police in hopes of saving the offender from punishments.

When a victim refuses to cooperate, they will typically be unable to "save" the offender, and could be prosecuted themselves. For example, 16 year old Amanda was sent to jail under contempt charges because she refused to testify against her older boyfriend with whom she had engaged in sexual acts.³⁹ Even though she was released from jail and she and her boyfriend were married, her boyfriend was still prosecuted. Some victims refuse to cooperate because of the potentially devastating effects the punishments of the offender will have on them, the victim. For example, they may be less likely to cooperate with police because of the consequences of losing parenting and financial support.⁴⁰ Some suggest that in close-in-age situations, the victim's cooperation should be required. Without this cooperation many critics argue that the charges should be dropped.

Parental Restraining Orders

As stated previously, parents may report cases of statutory rape in an attempt to end their teenager's relationship, even if the participants are close in age. However, even parents who wish to dissolve their minor's relationship for whatever reason, rarely understand the true consequences that are in store for the offender. When Frank, a high school senior, had consensual sex with his girlfriend, a freshman at the school he attended, the girl's mother called the police. The reporting was only meant to scare the young couple, because the girl's mother did not approve of her daughter having sex. However, once reported Frank then faced two to twenty years in prison and registration as a sex offender. Once the mother understood the seriousness of her report, she requested that the charges be dropped. The police told her that once it was reported, it could not be dismissed. Now Frank and his young girlfriend are married

and have children. However, the reporting and conviction in this case, still limits this young couple's opportunities to live productive lives.

Parents face a dilemma when believing their child is not mature enough to make adult decisions, and not wanting to ruin someone else's life in the process of making the undesired activity stop. It is made even more confusing in states that require mandatory reporting if parents suspect their child is involved in violating statutory rape laws. Some argue that decriminalizing an act undermines parental authority. In cases like these, Olszewski (2006)⁴¹ has proposed the enactment of a parental restraining order. This order would allow parents to seek legal assistance in discouraging their teenager's sexual activity. However, the provision would not lead to a conviction of the person to whom the order was directed. It is argued that this approach would empower parents by giving them an option with less severe consequences for the teenage couple when the parents believe a relationship has gone too far.

Conclusions

Statutory rape laws are intended to punish adults who have sex with minors. The assumption behind these laws when they were originally enacted was that only teenagers who exceeded the age of consent could make informed decisions about engaging in sexual behavior. However valid that argument may have been, the reality is that an increasing percentage of teenagers are participating consensual sexual activity in close-in-age dating relationships. The issue is whether these cases should be processed through the juvenile or adult justice systems or not prosecuted at all. Few would argue to do away with these laws altogether, but the suggestion is that more be done to exclude unintended offenders from being prosecuted. The response, as has been discussed previously, has been the introduction of Age Gap Provisions and Romeo and Juliet Clauses. However, many of these cases continue to be processed through the courts and can have life-long effects on the perpetrators of these acts. The question remains whether handling these cases in this way protects the public or the supposed victims.

States have not been quick to embrace the Model Penal Code (MPC), Sec. 213.3, according to which sexual relationships (both vaginal and oral) between teenagers who are close- in-age would be decriminalized provided that the acts are consensual and the person is no more than four years older than the minor.⁴² Given that many teenagers whose close-in-age sexual behavior violates statutory rape laws but are of little danger to the public (as seen in re-offense rates), considerable time and expense could be saved by adopting the MPC recommendation. Decriminalization could be tied to brief educational programs and providing parents with the option of a restraining order to control their child's behavior. Even failing these efforts, consideration should be given to encouraging judges and prosecutors to use rehabilitation (e.g., educational classes), as opposed to punishment, in deciding these cases.

Requiring sex offenders to register and to have their information posted on the publicly available website is designed to protect the public. The offenders who register have been determined by law to be a danger to the public regardless of their risk of re-offending. Such a requirement, particularly with offenders in close-in-age cases, may not be a danger to public safety. Moreover, this requirement imposes wide-ranging restrictions on young people, and can stigmatize their acceptance in society. Not requiring young people whose cases meet carefully crafted criteria should be considered even if their cases are prosecuted. Legislation under consideration in Texas with regard to enabling close-in-age offenders to be removed from the registry reflects public concern that justice is not always well served by this requirement.

Appendix A:

State Laws Relating to Teenage Sexuality:

Alabama: Age of Consent: 16 Age Gap Provision: Yes*

Rape in the first degree: Class A Felony

If he or she is 16 or older and engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.

Rape in the second degree: Class B Felony

If he or she is 16 years or older and engages in sexual intercourse with a member of the opposite sex who is less than 16 but older than 12 years old if the actor is at least two years older than the member of the opposite sex.

Sodomy in the first degree: Class A Felony

He, being 16 years or older, engages in deviant sexual intercourse with a person who is less than 12 years old.

Sodomy in the second degree: Class B Felony

He, being 16 years or older, engages in deviant sexual intercourse with a person who is less than 16 years of age but more than 12.

Alaska: Age of Consent: 16 Age Gap Provision: Yes*

Sexual Abuse of a Minor in the first degree: Unclassified Felony

Being 16 years or older, the offender engages in sexual penetration with a person under the age of 13.

Being 18 years of age or older, the offender engages in sexual penetration with a person under the age of 16 (the offender can not be of authority such as a parent, stepparent, legal guardian, teacher, health care professional, etc. or be living in the same household as the victim).

Sexual Abuse of a Minor in the second degree: Class B Felony

Being 16 years or older the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age AND is at least three years younger than the offender.

Being 18 years or older, the offender engages in sexual contact with a person under the age of 16.

Arizona: Age of Consent: 18 Age Gap Provision: No*

Sexual Conduct with a Minor:

A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person under the age of 18.

Sexual conduct with a minor who is under the age of 15 is a class 2 felony.

Sexual conduct with a minor who is at least 15 years of age is a class 6 felony (unless the offender is a parent, stepparent, adoptive parent, legal guardian or foster parent. In this case it is a class 2 felony).

It can be used in the defense of the offender if the victim was at least 15 years of age, that the offender did not know or could reasonably know the victims age.

Arkansas: Age of Consent: 16 Age Gap Provision: No*

Sexual Assault in the first degree: Class A Felony?

A person commits sexual assault in the first degree if the person engages in sexual contact with a person under the age of 16 and the actor was not more than three years older than the victim (the actor can not be a person of authority of a relative).

Sexual Assault in the second degree: Class B Felony?

A person commits sexual assault in the second degree if the person engages in sexual contact with a person, if the actor is under 18 and the victim is not younger than 14.

California: Age of Consent: 18 Age Gap Provision: No*

Unlawful Sexual Intercourse:

Any person who engages in sexual intercourse with a minor under the age of 18 who is not three years younger or three years older than the perpetrator. Reduced charge to a misdemeanor.

An adult who engages in unlawful sexual intercourse with a minor who is less than 2 years younger than the adult will be charged with a civil penalty, not to exceed \$2000.00.

Colorado: Age of Consent: 17 Age Gap Provision: Yes*

Sexual Assault: Class 4 Felony

Sexual Assault is committed if at the time of the act the victim was less than 15 years of age and the actor was at least four years older than the victim (and the victim was not the actor's spouse).

Connecticut: Age of Consent: 16 Age Gap Provision: Yes*

Sexual Assault in the first degree: Class B or A Felony

If a person engages in sexual intercourse with another person and such other person is under 13 years of age and the actor is more than 2 years older than such person.

Sexual Assault in the second degree: Class C or B Felony

If a person engages in sexual intercourse with another person and such person is 13 years of age or older, but under 16 years of age and the actor is more than 2 years older than such person.

Delaware: Age of Consent: 18 Age Gap Provision: Yes*

762(d) Sexual Offense Provision

As to sexual offenses in which the victim's age is an element of the offense because the victim has not yet reached his or her 16 birthday (but older than 12 years of age), and the person committing the act is no more than 4 years older than the victim, sexual conduct pursuant to this section will not be a crime.

Florida: Age of Consent: 18 Age Gap Provision: Yes*

Unlawful Sexual Activity with Certain Minors:

A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony in the second degree.

In Section 943.04354 it states that a person can be removed from the sex offender registry if they were not more than 4 years older than the victim at the time of the offense and the victim was at least 14 years of age or older.

Georgia: Age of Consent: 16 Age Gap Provision: Yes*

Statutory Rape:

If the victim is at least 14 but less than 16 years of age and the offender is 18 years of age or younger and is no more than 3 years older than the victim, the crime will be reduced to a misdemeanor.

Sodomy:

If the victim is at least 13 but less than 16 years of age and the offender is 18 years of age or younger and is no more than 4 years older than the victim, the crime will be reduced to a misdemeanor.

Child Molestation:

If the victim is at least 14 but less than 16 years of age and the offender is 18 years of age or younger and is no more than 4 years older than the victim, the crime will be reduced to a misdemeanor.

Hawaii: Age of Consent: 16 Age Gap Provision: Yes*

Sexual Assault in the First Degree: Class A Felony

The actor knowingly engages in sexual activity with a person who is at least 14 years old but less than 16 years old provided that the actor is not less than 5 years older than the minor.

Sexual Assault in the Third Degree: Class C Felony

The person knowingly engages in sexual activity with a person who is at least 14 years old but less than 16 years old or causes the minor to have sexual contact with the person; provided that the person is not less than 5 years older than the minor.

Idaho: Age of Consent: 18 Age Gap Provision: Yes*

Sexual Abuse of a Child Under the age of 16:

It is a felony for any person 18 years of age or older to solicit a minor child under the age of 16 to participate in a sexual act or cause of have sexual contact with such minor child (not amounting to lewd conduct as defined below). Penalty: the actor shall be imprisoned for an amount of time not exceeding 15 years.

Lewd Conduct with a Minor Child Under the Age of 16:

Any person who shall commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of 16 years, including but not limited to genital to genital contact, oral to genital contact, anal to genital contact, oral to anal contact, manual to anal contact or manual to genital contact, whether between persons of the same or opposite sex or who shall involve such a child in the act of bestiality or sado-masochism shall be guilty of a felony and imprisoned in the state prison for a term no more than life.

Illinois: Age of Consent: 17 Age Gap Provision: No:*

Predatory Criminal Sexual Assault of a Child: Class X Felony

Committed if the accused was 17 years of age or older and commits an act of sexual penetration with a victim who is under 13 years of age when the act was committed.

Criminal Sexual Abuse: Class A misdemeanor

The accused commits criminal sexual abuse if he or she commits an act of sexual penetration or sexual conduct with a victim who was at least 13 years of age but under 17 years of age and the accused was less than 5 years older than the victim.

Indiana: Age of Consent: 16 Age Gap Provision: No*

Sexual Misconduct with a Child:

A person at least 18 years of age who, with a child at least 14 years of age but less than 16, performs or submits to sexual intercourse or deviant sexual conduct commits sexual misconduct with a child, a Class C Felony. (It is a Class B Felony if the person is 21 years of age or older).

It is to the defense of the prosecution if all of the following apply:

- The person was not more than 4 years older than the victim
- The relationship between the person and the victim was a dating relationship or an ongoing personal relationship (not family relationship)

- The person was not older than 20 years old
- The person did not threaten the victim or use deadly force
- The person did not commit the crime while armed with a deadly weapon
- The crime did not result in serious bodily injury
- The person did not furnish, without the victim's knowledge, the victim a drug or controlled substance, or know the victim had been furnished a drug or controlled substance without the victim's knowledge.
- The person did not have authority or substantial influence over the victim.
- The person had not committed any other sexual offense against any other person.

Iowa: Age of Consent: 16 Age Gap Provision: Yes*

Sexual Abuse in the Third Degree: Class C Felony

Sexual Abuse in the third degree is committed in the victim is 14 or 15 years of age and the offender is four or more years older than the victim.

Kansas: Age of Consent: 16 Age Gap Provision: No*

Unlawful Voluntary Sexual Relations: Person Felony level 8-10

Engaging in voluntary (1) sexual intercourse, (2) sodomy, (3) lewd fondling or touching, with a child who is 14 years of age but less than 16 years of age and the offender is less than 19 years of age and less than 4 years older than the child. The child and the offender must be the only parties involved and members of the opposite sex.

- (1) level 8 person felony
- (2) level 9 person felony
- (3) level 10 person felony

Kentucky: Age of Consent: 16 Age Gap Provision: Yes*

Sexual Abuse in the Second Degree: Class A misdemeanor

If the actor is at least 18 years old but less than 21 years old and subjects the victim who is less than 16 years old to sexual contact. However, it is in the defense if the victim was at least 14 years old and the actor was less than 5 years older than the victim.

Sexual Abuse in the Third Degree: Class B misdemeanor

A person is guilty of Sexual Abuse in the third degree if he/she subjects another person to sexual contact without the others consent. However it is to the defense if, the lack of consent is due solely to the victim being unable to consent because he/she is under the age of 16 years old and they are at least 14 years old and the actor was less than 18 years old.

Louisiana: Age of Consent: 17 Age Gap Provision: Yes*

Felony Carnal Knowledge of a Juvenile:

Committed when a person who is 19 years of age or older has sexual intercourse, with consent, with a person who is 12 years of age or older but less than 17 years of age (when the victim is not the spouse).

(2)When a person who is 17 years of age or older has sexual intercourse, with consent, with a person who is 12 years of age or older but less than 15 years of age(when the victim is not the spouse).

Misdemeanor Carnal Knowledge of a Juvenile:

Committed with a person who is 17 years or older but less than 19 years of age has sexual intercourse, with consent, with a person who is 15 years of age or older but less than 17 years of age. When the victim is not the spouse and the difference between ages is not more than 2 years.

The offender of this crime will not be subjected to any of the provisions of law which are applicable to sex offenders, including but not limited to the registration of the offender on sex offender sites.

Maine: Age of Consent: 16 Age Gap Provision: Yes*

Sexual Assault:

(1)When the actor engages in a sexual act with another person (not the actor's spouse), who is either 14 or 15 years of age and the actor is at least 5 years older than the other person. Class D crime.

(2)When the actor is at least 21 years of age and engages in a sexual act with another person, who is not the actor's spouse, who is either 16 or 17 years of age and is a student enrolled in a public or private school. Class E crime.

Unlawful Sexual Contact:

(1)When the actor has sexual contact with another person, not the actor's spouse, when the other person is in fact less than 14 years old and the actor is at least 3 years older than the other person. Class C crime. If the sexual contact includes penetration it is a class B crime.

(2)When the actor has sexual contact with another person, not the actor's spouse, when the other person is in fact less than 12 years old and the actor is at least 3 years older than the other person. This is a Class B crime. If it includes penetration it is a class A crime.

Maryland: Age of Consent: 16 Age Gap Provision: Yes*

Rape in the Second Degree:

Committed if the victim is under the age of 14 and the actor is at least 4 years older than the victim.

Massachusetts: Age of Consent: 16 Age Gap Provision: No*

“Section 23. Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under 16 years of age, shall be punished by imprisonment in the state prison for life or for any term of years or, except as otherwise provided, for any term in a jail or house of correction. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.”

Michigan: Age of Consent: 16 Age Gap Provision: No*

Criminal Sexual Conduct in the Third Degree: Felony

Committed when the victim is at least 13 years of age but under the age of 16.

Criminal Sexual Conduct in the Forth Degree: Misdemeanor

Committed when the victim is at least 13 years of age but under 16 years of age and the actor is 5 or more years older than the victim.(Under the discretion of the prosecutor to file for either crime?)

Minnesota: Age of Consent: 16 Age Gap Provision: Yes*

Criminal Sexual Conduct in the First Degree:

Committed when the victim is under the age of 13 and the actor is more than 3 years older than the victim.

Or when the victim is older than 13 years but less than 16 and the actor is more than 4 years older than the victim and in a position of authority.

Criminal Sexual Conduct in the Second Degree:

Committed when the victim is under the age of 13 and the actor is more than 3 years older than the victim.

Or when the victim is older than 13 but less than 16 and the actor is more than 4 years older than the victim and in a position of authority.

Criminal Sexual Conduct in the Third Degree:

Committed when the actor is under the age of 13 and the actor is no more than 3 years older than the victim.

Or when the victim is over the age of 13 but under the age of 16 and the actor is more than 2 years older than the victim.

Criminal Sexual Conduct in the Forth Degree:

Committed when the victim is under 13 and the actor is no more than 3 years older than the victim.

Or when, the victim is more than 13 but less than 16 and the actor is more than 4 years older than the victim and in a position of authority.

Mississippi: Age of Consent: 16 Age Gap Provision: Yes*

Statutory Rape:

Committed when a person who is 17 years or older has sexual intercourse with a child who is at least 14 years old but under 16 years old and is 3 years or more older than the victim who is not their spouse.

Or when a person 17 years of age or older has sexual intercourse with a child who is under the age of 14 and is 2 years or more older than the child (who is not their spouse).

Sexual Battery:

Committed when a person engages in sexual penetration with a child at least 14 years old but less than 16 and the actor is 3 or more years older than the child.

Or when, a person engages in sexual penetration with a child who is less than 14 years old and the actor is 2 or more years older than the child.

Missouri: Age of Consent: 17 Age Gap Provision: No*

Statutory Rape in the First Degree:

Committed when any person engages in sexual intercourse with another person who is under 14 years of age.

Statutory Rape in the Second Degree: Class C Felony

Committed when a person who is 21 years of age or older has sexual intercourse with a person who is less than 17 years of age.

Child Molestation in the Second Degree: Class A Misdemeanor

Committed when the offender subjects another person, who is less than 17 years of age, to sexual contact.

Montana: Age of Consent: 16 Age Gap Provision: Yes*

Sexual Assault:

A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault if the victim is less than 16 years old and the offender is 3 or more years older than the victim.

Sexual Intercourse without Consent:

A person who knowingly has sexual intercourse without consent with another person if the victim is less than 16 years old and the offender is 3 or more years older than the victim.

Nebraska: Age of Consent: 17 Age Gap Provision: No*

Sexual Assault of a Child in the second or third Degree: Class II or Class IIIA Felony

A person commits sexual assault of a child in the second or third degree if he or she subjects another person fourteen years of age or younger to sexual contact and the actor is 19 years of age or older.

Nevada: Age of Consent: 16 Age Gap Provision: No*

Sexual Assault:

(3)A person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony.

New Hampshire: Age of Consent: 16 Age Gap Provision: Yes*

Felonious Sexual Assault:

A person is guilty of a class B felony if the offender engages in sexual penetration with another person, other than a legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the offender and the victim is three years or more.

Sexual Assault:

A person is guilty of a Class A misdemeanor when (a) the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2 (b) when the actor subjects another person, who is not a spouse, who is 13 years of age or older and under 16 years of age to sexual contact, where the age difference between the actor and the other person is 5 years or more (c) in the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's spouse, who is 13 years of age or older, but under 16 where the age difference between the actor and the other person is 3 years or less. If a person is convicted under (c) that person will not be required to register as a sex offender.

New Jersey: Age of Consent: 16 Age Gap Provision: Yes*

Aggravated Sexual Assault in the First Degree:

Committed when the victim is at least 13 years old but less than 16 and the actor is at least 4 years older than the victim.

New Mexico: Age of Consent: 17 Age gap Provision: Yes*

Criminal Sexual Penetration in the Forth Degree:

Committed when a person has sexual penetration with a child who is thirteen to sixteen years of age and the offender is at least 18 years of age and is at least 4 years older than the child (who can not be the offenders spouse).

New York: Age of Consent 17 Age Gap Provision: No*

Sexual misconduct: Class A Misdemeanor

Committed when he or she engages in sexual intercourse with another person without that person's consent (someone under the age of 17).

Rape in the Second Degree: Class D felony

Committed when the actor is 18 years old or more and engages in sexual intercourse with another person who is less than 15 years old. It shall be an affirmative defense to this crime if the defendant was 4 years older than the victim at the time of the act.

Rape in the First Degree: Class B Felony

Committed when a person engages in sexual intercourse with any person 1) under the age of 11; 2) who is less than 13 years old and the offender is 18 years old or more.

North Carolina: Age of Consent: 16 Age Gap Provision: Yes*

Statutory Rape: Class B1 Felony

Guilty if the defendant engages in sexual intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least 6 years older than the victim, who is not their spouse.

Statutory Rape: Class C Felony

Guilty if the defendant engages in sexual intercourse or a sexual act with another person who is 13, 14 or 15 years of age and the defendant is at least 4 but less than 6 years older than the victim, who is not their spouse.

North Dakota: Age of Consent: 18 Age Gap Provision: No*

General Provision: 12.1-20-01

When criminality depends on the victim being a minor, the actor is guilty of the offense, only if the actor is at least 4 years older than the victim.

Corruption or Solicitation of Minors:

An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a class A misdemeanor, if the victim is a minor 15 years of age or older. If the offender is at least 22 years of age, it is a class C felony.

Sexual Assault:

Committed when any person engages in sexual contact with a person at least 15 years old but less than 18 years old and the offender is at least 22 years old is a Class C Felony. If the offender is under 22, then it is a class A misdemeanor.

Ohio: Age of Consent: 16 Age Gap Provision: No*

Unlawful Sexual Conduct with a Minor:

No person who is 18 years of age or older shall engage in sexual conduct with another, who is not their spouse, when the offender knows the other person is 13 years of age or older but less than 16. This is a felony in the Fourth Degree, except if the offender was less than 4 years older than the victim, in which case it is a misdemeanor in the first degree. If the offender is 10 years or more older than the victim, it is a felony in the third degree.

Oklahoma: Age of Consent: 16 Age Gap Provision: Yes*

Age Limitation on Conviction of Rape: 21-1112:

No person can be convicted of rape or rape by instrumentation on account of an act of sexual intercourse with anyone over the age of 14 years old, with his or her consent, unless the offender was over the age of 18 years at the time of such act.

Oregon: Age of Consent: 18 Age Gap Provision: Yes*

Age as a defense in Certain Cases:

In certain cases, in which the lack of consent was due solely by incapacity to give consent by reason of being less than 18 years old, it is the defense that the actor was less than 3 years older than the victim at the time of the act.

Rape in the Third Degree: Class C Felony

Committed if a person has sexual intercourse with another person under the age of 16.

Rape in the Second Degree: Class B Felony

Committed if a person has sexual intercourse with another person under the age of 14.

Rape in the First Degree: Class A Felony

Committed if a person has sexual intercourse with another person under the age of 12.

(These are the same for sodomy laws).

Pennsylvania: Age of Consent: 16 Age gap Provision: Yes*

Statutory Sexual Assault: Felony in the Second Degree

Except as provided in section 3121 (relating to rape), statutory sexual assault is committed when the offender engages in sexual intercourse with a compliant who is under the age of 16 years of age but older than 13 and the actor is four or more years older than the compliant, and the compliant and the actor are not married to each other.

Rhode Island: Age of Consent: 16 Age Gap Provision: No*

Third Degree Sexual Assault:

Guilty if he/she is over the age of 18 years of age and engages in sexual penetration with another person over the age of 14 but under the age of consent, 16 years of age.

Second Degree Sexual Assault:

Guilty if he/she engages in sexual contact with another person who is 14 years of age or younger.

First Degree Sexual Assault:

Guilty if he/she engages in sexual penetration with another person who is 14 years of age or younger.

South Carolina: Age of Consent: 16 Age Gap Provision: No*

Criminal Sexual Contact with Minors:

Guilty of the first degree if the actor engages in sexual battery with a victim who is less than 11 years of age.

Guilty in the second degree if the actor engages in sexual battery with a victim who is 14 years of age or less but who is at least 11 years of age.

Guilty in the second degree if the actor engages in sexual battery with a victim who is at least 14 years of age but who is less than 16 years of age and the actor is in a position of authority or is older than the victim.

South Dakota: Age of Consent: 16 Age Gap Provision: No*

Rape:

An act of sexual penetration accomplished with any person under the following circumstances:

(5) If the victim is 13 years of age, but less than 16 years of age and the perpetrator is at least 3 years older than the victim. In this section of rape, it is rape in the Fourth Degree and is a Class 3 Felony.

Sexual Contact with a Child Under 16-Felony or Misdemeanor:

Any person, 16 years of age or older, who knowingly engages in sexual contact with another person, other than the person's spouse, if the person is under the age of 16 years, the actor is guilty of a Class 3 Felony. If the actor is less than 3 years older than the victim, the actor is guilty of a Class 1 Misdemeanor.

Sexual Contact with a Child Under the Age of 16-Violation as a Misdemeanor:

Any person, under the age of 16, who knowingly engages in sexual contact with another person, other than his/her spouse, if such other person is under the age of 16 years of age, is guilty of a Class 1 Misdemeanor.

Tennessee: Age of Consent: 18 Age Gap Provision: Yes*

Mitigated Statutory Rape: Class E Felony

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least 15 years of age but less than 18 and the defendant is at least 4 but not more than 5 years older than the victim.

Statutory Rape: Class E Felony

Statutory rape is the unlawful sexual penetration of a victim by the defendant or the defendant by the victim when:

(1) The victim is at least 13 years of age but less than 18 years of age and the defendant is at least 4 years older than the victim; or

(2) This victim is at least 15 years of age but less than 18 years of age and the defendant is more than 5 years older than the victim.

Aggravated Statutory Rape: Class D Felony

Is the unlawful sexual penetration of a victim by the defendant, or the defendant by the victim when the victim is at least 13 years of age but less than 18 and the defendant is at least 10 years older than the victim.

Texas: Age of Consent: 17 Age Gap Provision: No*

§ 22.011. SEXUAL ASSAULT:

A person commits an offense if the person: (2) intentionally or knowingly: (A) causes the penetration of the anus or sexual organ of a child by any means; (B) causes the penetration of the mouth of a child by the sexual organ of the actor; (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor. (Child being a person under the age of 17)

However, it is an affirmative defense to prosecution under Subsection (a)(2) that: (1) the actor was not more than three years older than the victim and at the time of the offense: (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or (B) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and (2) the victim: (A) was a child of 14 years of age or older; and (B) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

Utah: Age of Consent: 18 Age Gap Provision: Yes*

Unlawful Sexual Activity with a Minor:

For the purposes of this section, “minor” is a person who is 14 years of age or older

but younger than 16 years of age, at the time of sexual activity.

Committed when the actor has sexual contact (intercourse, penetration, or sexual acts involving the victim's or actor's genitals, mouth, or anus) with a minor. When committed it is a Third Degree Felony unless the actor is less than 4 years older than the victim at the time the sexual activity occurred, in which case it is a Class B Misdemeanor.

Unlawful Sexual Conduct with a 16 or 17 year old:

For the purpose of this section, "minor" is a person who is 16 years of age or older but under than age of 18 at the time of the sexual conduct.

Committed when the actor is ten or more years older than the victim at the time of the sexual activity. This is a third degree felony.

Vermont: Age of Consent: 16 Age gap Provision: Yes*

Lewd or Lascivious Conduct with a Child:

No person shall willfully or lewdly commit and lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passion, or sexual desires, of such person. This section shall not apply if the actor is less than 19 years of age, the child is at least 15 years of age, and the contact is consensual.

Sexual Assault:

No person shall engage in a sexual act with another person and compel the other person to participate in a sexual act (c) when the other person is under the age of 16 years old, except where the persons are married, or the actor is less than 19 years of age, the child is at least 15 years of age and the act was consensual. (does not apply if the actor was in a form of authority of the child).

Virginia: Age of Consent: 18 Age Gap Provision: No*

Carnal Knowledge of Children between 13 and 15 years old:

If any person carnally knows, without the use of force, a child 13 years of age or older, but under the age of 15, such person will be guilty of a Class 4 Felony.

However, if the child consents to the act, the actor/accused is also a minor, and the child is 3 or more years the accused junior, the accused shall be guilty of a Class 6 Felony.

If such consenting child is less than 3 years the accused junior, the accused will be guilty of a Class 4 Misdemeanor.

Washington: Age of Consent: 16 Age Gap Provision: Yes*

Rape of a Child in the Third Degree: Class C Felony

Guilty when the person has sexual intercourse with another who is at least 14 years of age but less than 16 years of age and is not married to the perpetrator, and the perpetrator is at least 48 months older than the victim.

Child Molestation in the Third Degree: Class C Felony

Guilty when a person has, or knowingly causes, another person under the age of 18 to have sexual contact with another who is at least 14 years of age but less than 16 years of age and not married to the perpetrator, and the perpetrator is at least 48 months older than the victim.

West Virginia: Age of Consent: 16 Age Gap Provision: Yes*

Sexual Assault in the Third Degree:

Guilty when (2) the person, being 16 years of age or more, engages in sexual intercourse, or sexual intrusion with another person who is less than 16 years of age and who is at least 4 years younger than the defendant, and is not married to the defendant.

Sexual Abuse in the Third Degree:

Guilty when he subjects another person to sexual contact without the latter's consent, when such consent is due to the victim's incapacity to consent by reason of being less than 16 years of age. It is a defense that (1) the defendant was less than 16 years of age, and/or (2) the defendant was less than 4 years older than the victim.

Wisconsin: Age of Consent: 18 Age Gap Provision: No*

First Degree Sexual Assault of a Child: Class B Felony

Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13.

Second Degree Sexual Assault of a Child: Class C Felony

Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16.

Sexual Intercourse with a Child 16 Years of Age or Older:

Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A Misdemeanor.

Wyoming: Age of Consent: 18 Age Gap Provision: Yes*

Immoral or Indecent acts:

An actor convicted under these circumstances shall be found guilty unless the circumstances of the crime involve a victim who was under the age of 16 at the time of the offense and the actor was at least 4 years older than the victim.

Endnotes

- 1 Centers for Disease Control and Prevention (CDC), HIV Surveillance Report, 2008, Vol. 20, 2010, <<http://www.cdc.gov/hiv/topics/surveillance/resources/reports>>, accessed January, 2011.
- 2 Cocca, C.E. (2004). Jailbait: the politics of statutory rape laws in the united states. Albany, NY: State University of New York Press.
- 3 Texas Legislature. (2010). Texas penal code chapter 22. Retrieved from <http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.22.htm#22.011>
- 4 Supra note 2
- 5 Landry, D.J., & Forrest, J.D. (1995). How old are U.S. fathers?. Family Planning Perspectives, 27(4), 159-165.
- 6 Oliveri, R. (2000). Statutory rape law and enforcement in the wake of welfare reform. Stanford Law Review, 52(2), 463-508.
- 7 Pearlstein, Lisa. (2010). Walking the tightrope of statutory rape law: Using international legal standards to serve the best interests of juvenile offenders and victims. American Criminal Law Review, 47, 109.
- 8 Cohen, M. (2008). No child left behind bars: The need to combat cruel and unusual punishment of state statutory rape laws. Journal of Law and Policy, 16(2), 717-756
- 9 Taken from the Georgia code as provided by <http://www.legis.ga.gov/en-US/default.aspx>
- 10 Age of consent chart for the U.S. - 2010. (2010). Retrieved from <http://www.ageofconsent.us/>
- 11 Ibid
- 12 Moore, S. (2008). Out of the fire and into the frying pan: Georgia legislature's attempt to regulate teen sex through the criminal justice system. Howard Law Journal, 52(1), 197.
- 13 James, S. (2009). Romeo and Juliet were sex offenders: An analysis of the age of consent and a call for reform. University of Missouri-Kansas City Law Review, 78, 241.
- 14 Oberman, M., & Delgado, R. (1996). Statutory rape laws: Does it make sense to enforce them in an increasingly permissive society? American Bar Association Journal, 82, 86-87.
- 15 Sutherland, K. (2003). From jailbird to jailbait: Age of consent laws and the construction of teenage sexuality. William and Mary Journal of Women and the Law, 9, 313-349.
- 16 Supra note 12
- 17 Supra note 8
- 18 Ibid
- 19 Zilney, L.A., & Zilney, L.J. (2009). Reconsidering sex crimes and offenders: Prosecution or persecution? Santa Barbara, CA: ABC-CLIO, LLC.
- 20 Zilney, L.J., & Zilney, L.A. (2009). Perverts and predators: The making of sexual offender laws. Lanham, MD: Rowman & Littlefield Publishers, Inc.
- 21 Ibid
- 22 Ibid
- 23 Supra note 8
- 24 Minnesota, Office of the Revisor of Statutes, . (2010). 244.052 predatory offenders. Retrieved from <https://www.revisor.mn.gov/statutes/?id=244.052>
- 25 Supra note 19
- 26 Henry, M.D., & Cunningham, S. (2010). Do statutory rape laws work. Proceedings of the CELS 2009 4th annual conference on empirical legal studies paper Available at http://business.baylor.edu/scott_cunningham/research_files/statrape10.pdf
- 27 Ibid
- 28 Supra note 12
- 29 Ibid
- 30 Meier, A. M. (2007). Adolescent first sex and subsequent mental health. American Journal of Sociology, 112(6), 1811-1847.
- 31 Ibid
- 32 Ibid

- 33 Harden, K. P., Mendle, J., Hill, J. E., & Emery, R. E. (2008). Rethinking timing of first sex and delinquency. *Journal of Youth and Adolescence*, 37(4), 373-385.
- 34 Supra note 8
- 35 Carpentier, M., Silovsky, J.F., & Chaffin, M. (2006). Randomized trial of treatment for children with sexual behavior problems: Ten-year follow-up. *Journal of Consulting and Clinical Psychology*, 74, 482-488.
- 36 Chaffin, M. (2008). Our minds are made up - don't confuse us with the facts: Commentary on policies concerning children with sexual behavior problems and juvenile sex offenders. *Child Maltreatment*, 13, 110-121
- 37 Supra note 8
- 38 Supra note 15
- 39 Supra note 19
- 40 James, S. (2009). Romeo and Juliet were sex offenders: An analysis of the age of consent and a call for reform. *University of Missouri-Kansas City Law Review*, 78, 241.
- 41 Olszewski, D. (2006). Statutory rape in Wisconsin: History, rationale, and the need for reform. *Marquette Law Review*, 89, 693.
- 42 Supra note 12

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